

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Fynale Barnwell and Shavell	)	Case No.: 3:23:CV-00583-SAL
Barnwell, individually, and as	)	
natural parents and guardians of,	)	
M.B., a Minor Child,	)	
	)	
Plaintiff(s),	)	
	)	
v.	)	
	)	
Lexington School District One,	)	PLAINTIFF'S LOCAL RULE 26.03
GERRITA POSTLEWAIT, in her	)	DISCLOSURES
individual capacity, NICOLE		
LIVINGSTON, in her individual		
capacity, JACOB SMITH, in his		
individual capacity, and South		
Carolina Department of Education,		
	)	
Defendants.	)	

The Plaintiff(s), by and through their undersigned counsel, hereby submits these Local Civil Rule 26.03 (D.S.C.) Disclosures as follows:

1. **Short statement of the facts of the case**

RESPONSE:

Plaintiffs bring this action individually and on behalf of their minor daughter due to damages she sustained when she was assaulted by a schoolteacher while exercising her constitutional rights.

2. **Names of fact witnesses likely to be called and a brief summary of their expected testimony.**

RESPONSE:

Please see the witness below. At this early stage of the case, Plaintiffs do not yet have information concerning who all their witnesses may be. Plaintiffs reserve the right to supplement this list with additional witnesses upon obtaining information and belief that additional persons may have pertinent information concerning the facts of the case and will identify additional witnesses as discovery continues.

Plaintiffs reserve the right to call any and all witnesses identified during discovery. Additionally, as discovery is just beginning, Plaintiffs specifically reserve the right to name additional witnesses identified during discovery in this matter and to call any witness at trial listed by any party to this action.

- a. Plaintiffs – The Plaintiffs in the matter and are expected to testify about the facts of the case and the damages sustained.

**3. The names and subject matter of expert witnesses**

RESPONSE:

The parties have not yet determined what experts may be needed for trial in this matter and will provide this information, once known, in accordance with the Conference and Scheduling Order. The parties reserve the right to name witnesses discovered during discovery and to call at the trial of this case any witness, whether fact or expert, listed by any party.

**4. A summary of the claims or defenses with statutory and/or case citations supporting the same.**

RESPONSE:

Plaintiffs alleged that despite well-established federal and state law the minor Plaintiff's constitutional rights were violated after she decided to exercise her First Amendment Right to refrain from acknowledging the Pledging Allegiance in a non-disruptive manner. Jurisprudence Plaintiff will rely on includes but is not limited to 42 U.S.C. § 1983; *DeLong v. IRS*, 1990 U.S. App. LEXIS 27665 (4th Cir. Jul. 10, 1990); *Koon v. Dyson*, 2004 U.S. Dist. LEXIS 32509 (D. S.C. Jul. 23, 2004); and *W. Va. State Bd. Of Educ. v. Barnette*, where the United States Supreme court recognized that: "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." 319 U.S. 624, 642 (1943).

**5. Absent special instructions from the assigned judge, propose dates for the deadlines listed in Local Civ. Rule 16.02 (D.S.C.).**

RESPONSE:

The parties have proposed dates for these items in a Consent Amended Scheduling Order.

**6. Any special circumstances that would affect the time frames applied in preparing the scheduling order.**

RESPONSE:

The parties have proposed dates for these items in a Consent Amended Scheduling Order.

7. **The parties shall provide any additional information requested in the Pre-Scheduling Order (Local Civil Rule 16.01) or otherwise requested by the assigned judge.**

RESPONSE:

Counsel for all parties certify that they have discussed the availability of mediation with their respective clients. Counsel for the parties will independently provide an ADR Statement and Certification to the Court as required by Local Rule 16.03. A proposed confidentiality order will be submitted to the Court. The Plaintiff does not consent to a trial before a United States Magistrate Judge.

s/Tyler D. Bailey  
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